

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 C.M. BUSTO,  
4 Plaintiff

5 v.

6 CHEVRON,  
7 Defendant

Case No.: 3:21-cv-00142-MMD-WGC

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

9 This Report and Recommendation is made to the Honorable Miranda M. Du, United  
10 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28  
11 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

12 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro  
13 se complaint (ECF No. 1-1).

14 A person may be granted permission to proceed IFP if the person “submits an affidavit  
15 that includes a statement of all assets such [person] possesses [and] that the person is unable to  
16 pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense  
17 or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez*  
18 *v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to  
19 all actions filed IFP, not just prisoner actions).

20 In addition, the Local Rules of Practice for the District of Nevada provide: “Any person  
21 who is unable to prepay the fees in a civil case may apply to the court for authority to proceed  
22 [IFP]. The application must be made on the form provided by the court and must include a  
23 financial affidavit disclosing the applicant’s income, assets, expenses, and liabilities.” LSR 1-1.

1 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some  
2 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)  
3 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the  
4 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

5 The court finds Plaintiff’s IFP application to be frivolous and insincere. It states that  
6 Plaintiff’s income is "infinite" and his employer is "self/everything/God/You/Us/All things."  
7 (ECF No. 1 at 1.) He states that he is a bank account in his mind. (*Id.* at 3.) Plaintiff’s IFP  
8 application (ECF No. 1) should be denied.

9 “[T]he court shall dismiss the case at any time if the court determines that-- (A) the  
10 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails  
11 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a  
12 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

13 Plaintiff’s pro se "complaint" contains even more fantastical statements than the IFP  
14 application and is clearly frivolous. The pleading contains references to Armageddon, a sexual  
15 harassment claim against all 331 million Americans and another statement that he will sue all 7.5  
16 billion people on Earth and win, statements about the alphabet and symbolism, and other stream  
17 of consciousness-type statements.

18 As the Supreme Court has noted, “a litigant whose filing fees and court costs are assumed  
19 by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing  
20 frivolous, malicious, or repetitive lawsuits.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “To  
21 prevent such abusive or captious litigation, § 1915(d) [now § 1915(e)(2)(B)(i)] authorizes federal  
22 courts to dismiss a claim filed [IFP] ‘if the allegation of poverty is untrue, or if satisfied that the  
23 action is frivolous or malicious.’” *Id.* “Dismissals on these grounds are often made *sua sponte*

1 prior to the issuance of process, so as to spare prospective defendants the inconvenience and  
2 expense of answering such complaints.” *Id.* (citation omitted). A complaint is frivolous “where it  
3 lacks an arguable basis either in law or in fact.” *Id.* This term “embraces not only the inarguable  
4 legal conclusion, but also the fanciful factual allegation.” *Id.* Section 1915(e)(2)(B)(i) “accords  
5 judges not only the authority to dismiss a claim based on an indisputably meritless legal theory,  
6 but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss  
7 those claims whose factual contentions are clearly baseless.” *Id.* at 327. This includes “claims of  
8 infringement of a legal interest which clearly does not exist” and “claims describing fantastic or  
9 delusional scenarios.” *Id.* at 327-28

10 Therefore, the court recommends that this action be dismissed with prejudice as  
11 frivolous.

### 12 **III. RECOMMENDATION**

13 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING**  
14 Plaintiff’s IFP application (ECF No. 1) and **DISMISSING** the complaint (ECF No. 1-1) **WITH**  
15 **PREJUDICE** as frivolous.

16 The Plaintiff should be aware of the following:

17 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
18 this Report and Recommendation within fourteen days of being served with a copy of the Report  
19 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s  
20 Report and Recommendation” and should be accompanied by points and authorities for  
21 consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

Dated: April 8, 2021

Walter G. Cobb

William G. Cobb  
United States Magistrate Judge